IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 354 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DHIRUBHAI UKABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner

MR. S.T.MEHTA, LD.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE H.R.SHELAT

Date of decision: 25/07/96

ORAL JUDGEMENT

Per: Dave,J:-

In this Appeal against the judgment of conviction and sentence, the plea coming from learned counsel for the appellant is that, regard being had to the Supreme

Court decision in Surinder Kumar, Appellant v. Union Territory, Chandigarh, Respondent, AIR. 1989, S.C. page-1094 and in case of Hem Raj, Appellant v. State (Delhi Administration) Respondent, 1990(2), GLH, Page-386 and a Bench decision of this Court in Patel Chhutubhai Ranchhodbhai, Appellant v. State of Gujarat, 1990(1) G.L.H. page-43, the case should have been taken out of the purview of Section 302 I.P.C. and it should have landed within the purview of Section 304, Part-II. We propose to decide this appeal on this solitary contention coming from learned counsel for the appellant. We therefore do not deem it necessary to advert to the the case of the prosecution in detail.

The appellant before us Dhirubhai Patel was charged for the alleged commission of the offences punishable under Section 302 I.P.C. and under Section 135 of the Bombay Police Act, on the accusation that, he on July 23, 1990 at about 8.30 p.m. had assaulted upon the deceased Vallabh Sukhabhai at Village Moti Meghani, near Kotada Sanghani of Rajkot District by knife and had caused him fatal injuries; as a result of which he had died. It is the case of the prosecution, that the appellant accused Dhirubhai Patel was having a knife in violation of the prohibitory orders issued by the Competent Authority, and therefore, he would be guilty for the offence punishable under Section 135 of the Bombay Police Act.

Placing reliance upon the evidence laid by the prosecution, the learned Addl. Sessions Judge at Gondal has reached the conclusion that the case of the prosecution, for the offence punishable under Section 302 I.P.C. has been duly proved against the appellant accused. Learned Addl. Sessions Judge therefore has convicted the appellant accused for the said offence and has been sentenced to the R.I. for life. He has been acquitted so far as the other charge is concerned.

As indicated by us above, the solitary contention coming from learned counsel for the petitioner is that, for invoking exception to Section 302 I.P.C. four requirements must be satisfied, namely (i) it was a sudden fight, (ii) there was no premeditation, (iii) the act was done in a heat of passion, (iv) the assailant had not taken any undue advantage or acted in a cruel manner. Learned counsel urges that, the number of wounds caused during the occurrence would not be a decisive factor, but what is important is that, the occurrence must have been sudden and unpremeditated and the offender must have acted in a fit of anger.

The Supreme Court pronouncement in case of Surinder Kumar (supra) is practically on the similar lines. In that case it was found that the accused had inflicted a solitary injury and had caused the death of the accused. It was found that the incident had taken place most unexpectedly, in a sudden quarrel, without premedidation and during that course the accused had caused solitary injury. The Supreme Court has concluded by saying that the offence committed was one punishable under Section 304 Part-II, I.P.Code, but not under Section 302 I.P.Code. The Bench decision of this Court in case of Patel Chhotubhai Ranchhodbhai (supra) also pronounces in the same manner. It was a case in which the accused in a sudden fight and in a heat of passion had caused death of his brother with whom he had a cordial relation. The injuries were caused with a knife which was handy with the accused. The accused was found not to be acting in a cruel manner. The Bench decision says that the conviction under Section 302 I.P.C. was required to be coverted to one under Section 304 Part-I I.P.C.

Looking to the contention coming from learned counsel for the appellant, and looking to the principle laiddown by the Supreme Court and this Court in the above said three decisions, the reference requires to be made to the evidence which would be in this respect. Mansukh Nanjibhai, P.W.- 11, Exhibit - 48 has testified that, he was present during the incident and that on the previous day he had been to Rajkot with a view to see his friends. He had returned to village Moti Meghani where the incident had taken place at about 8 p.m. on the day of the occurrence. He was waiting near the ota near the stand and was having a puff. According to him, at that time deceased Vallabbhai had come there and later on they were engaged in talk. According to this witness, at that time the accused had come there and at that time deceased Vallabhbhai had asked money from the accused, which was due from him to the deceased. Because of this demand at a public place the accused was annoyed and had made a grievance that such a demand could not and should not be made at a public place. The say of Mansukhbhai further is that, during the altercation which had followed, the accused had taken out the knife from his pant belt and had given the blows to the deceased. Gordhan Devsibhai, P.W.- 13, Exhibit - 51 has also deposed on the parallel lines. His say is that, he was passing from near the place of occurrence at about 8.30 p.m. and he had seen the deceased and the accused involved in the altercation. According to this witness the deceased Vallabhbhai had

asked for the due monies from the accused and that, the accused had got enraged and all of a sudden he had taken out the knife from the belt of his pant and had given two blows to the deceased.

The evidence tendered by the Autopsy Surgeon Dr. Umang Nathwani at Exhibit - 38 and Autopsy Report at Exhibit - 39 would go to show that, the deceased had two injuries, namely the stab wounds, one on the chest and the second one on mid-auxiliary line. Dr. Nathwani has stated in his evidence that the above said injuries could have been caused by the muddamal weapon and that, both the internal injuries could have been recovered by a minimum surgical operation. This medical evidence would go to show that the deceased was having the above said two injuries which had proved to be fatal. When the evidence of the above said two eye witnesses is read in view of what has been said by the Supreme Court in case of Surinder Kumar, Appellant (supra) it shall have to be accepted that, it was a sudden fight and that there was no premeditation and that, the act was done in a heat of passion, and that the appellant accused had not taken any undue advantage.

We prefer to say so, because it was a chance meeting at the outskirts of the village between the appellant accused and the deceased. The appellant accused never knew that the deceased would be found nearby the spot of the occurrence. The demand also appears to be a chance demand because the demand was never in the contemplation of anybody. The chance meeting followed by chance demand of the dues at a public place had given a cause of agitation to the appellant accused. It can not be said that there was a premeditation on the part of the appellant accused to assault upon the deceased. All what had happened during the evening hours at the outskirts of the village was without any premeditation or deliberation. This evidence would lead us to believe, as has been said by the Supreme Court in case of Surinder Kumar (supra) that the case would be taken out of the purview of Section 302 I.P.Code. It is indeed true that the Supreme Court in case of Surinder Kumar (supra) said that the accused could be convicted under Section 304 Part-I. But it is also been said that the number of wounds caused during the occurrence would not be a decisive factor. After saying that the case would fall within the purview of Section 304 Part-I I.P.Code, the R.I. of seven years was awarded to the appellant accused. In case of Hem Raj (supra) the case was of a solitary injury and the Supreme Court has said that the offence committed by the accused

would be punishable under Section 304 Part-II I.P.Code. It was a case of a solitary injury and the punishment awarded is R.I. for seven years. In case of Patel Chhotubhai Ranchhodbhai (supra) it has been said that the case would fall within the purview of Section 304 Part-I I.P.Ccode. The sentence awarded is R.I. for seven years.

Looking to the facts & circumstances of the case as deposed by the above said two witnesses, we are inclined to say that the present case definitely comes out of the purview of Section 302 I.P.Code and would fall within the purview of Section 304 Part-II I.P.Code. We say so because, though two injuries came to be inflicted by the appellant accused, it can not be said that the appellant accused had acted in a cruel manner. More over nothing was brought on record to show that the appellant accused had a criminal background or a history of violence. Taking into consideration all these facts, we are of the opinion that the conviction of the appellant accused from Section 302 I.P.Code requires to be converted to one punishable under Section 304 Part-II I.P.Code.

The offence was committed by the appellant accused on July 23, 1990, and he has been behind the bars from August 03, 1990, as bail was refused to him. By now, in all six years have been passed. If the remission and other benefits to be earned by the appellant accused are to be taken into consideration, the period would be yet more. In this background, we are of the opinion that the punishment undergone by the appellant accused would be sufficient. We therefore direct that, if the appellant accused is not required in any other criminal case or proceedings, he should be set at liberty forthwith.

The appeal succeeds to the above said extent and the same is hereby allowed accordingly.
